IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO.579 OF 1997

Gajanan Dattatraya Pore,)
Age Adult, Occupation - R/o.)
Shivari, Tal.Purandhar,)
District - Pune.).. Appellant
(Org.Accused)

Vs.

The State of Maharashtra.).. Respondent

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S/Shri R.S.Kate and N.B.Shivarkar for the appellant.

Ms P.H.Kantharia, APP for State.

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CORAM : V.G.PALSHIKAR &
R.C.CHAVAN, JJ

DATED : 11TH JULY, 2005

ORAL JUDGMENT : (Per R.C.Chavan, J)

1. Being aggrieved by his conviction for offence punishable under Section 302 of Indian Penal Code and resultant sentence of imprisonment for life and fine of Rs.2,000/- imposed upon him, the accused Gajanan in Sessions Case No.166 of 1997 before the learned Additional Sessions Judge, Pune, has preferred this appeal.

2. Facts which led to the prosecution are as

under:-

. Deceased Rajendra used to tease wife of accused Gajanan. Angered thereby, accused Gajanan hit Rajendra on his neck and abdomen with knife. Rajendra's cries attracted his relations and others. Rajendra was carried to Sasoon Hospital, Pune, where he succumbed to his injuries. On the report of one Nivruti Maruti Kamathe, police registered offence. Accused too seems to have reached police station immediately after the incident. Police arrested accused, recorded statements of witnesses, seized incriminating articles and on completion of investigation, sent charge sheet to learned Judicial Magistrate, First Class, Saswad, who committed the case to the Court of Sessions, Pune.

3. The learned Additional Sessions Judge, Pune, framed charge of offence punishable under Section 302 of Penal Code against accused who pleaded not guilty and claimed to be tried. In an attempt to bring home guilt of the accused, prosecution examined as many as 14 witnesses. Upon consideration of the evidence tendered by prosecution in light of arguments advanced, the Additional Sessions Judge, Pune, held the accused guilty of offence punishable under Section 302 of Penal Code and sentenced him to undergo

imprisonment for life and fine of Rs.2,000/-. Being aggrieved thereby, the accused has appealed.

4. We have heard learned counsel for the appellant and learned Additional Public Prosecutor for State. Learned counsel for the appellant assailed the judgment of the Trial Court on the ground that the learned Additional Sessions Judge, Pune, had placed reliance on the so called eye witnesses who were not referred to in the First Information Report. He also submitted that the witnesses referred to in the First Information Report were not examined by the prosecution.

5. First Information Report was given by P.W.1-Nivruti Maruti Kamathe, who was attracted to the spot from his hotel on hearing cries of victim to the effect that Gajanan, i.e. the accused, was attacking the victim. Nivruti states that he rushed to victim and saw two bleeding injuries on his person. He took victim to victim's house, then stopped one jeep coming from Jejuri side, made the passengers to alight, and sent victim to Sasoon Hospital, Pune, with Bhausaheb Kamathe and Drupadibai Kamathe. He himself went to Jejuri police station to lodge report. He proved his report at Exhibit-11. In his report, he mentioned that on his raising shouts, Bhausaheb Ramchandra

Kamathe, Suryakant Govind Jagtap, Sunanda Pandurang Kamathe and Pandurang Keshav Kamathe came to the spot.

6. Learned counsel for the appellant submitted that none of these witnesses were examined by prosecution. Instead, the prosecution examined Draupadibai Ramchandra Kamathe, Sulochana Bhausaheb Kamathe, Asha Gajanan Sutar and Tushar Narayan Ghadge, as P.Ws.5 to 8, to prove the incident. These witnesses state that they were attracted by the cries of victim and saw the accused actually inflicting the blows with knife on victim. It may be seen that there is nothing incredible in the names of these witnesses not being mentioned in the First Information Report. Complainant Nivruti himself admittedly came to the spot soon after the event. He himself states that when he went to victim, he saw two bleeding injuries. If that is so and if his cries attracted others like Bhausaheb, Sunanda or Pandurang Kamathe, these persons cannot be the eye witnesses, and therefore, their non-examination is irrelevant. Since the report is not given by the victim himself, absence of names by Draupadibai and others as eye witnesses to the incident is equally immaterial and cannot lead to discarding their otherwise coherent and reliable testimonies.

7. Learned counsel for the appellant next submitted that Draupadi admitted that she herself, her son Kisan and Bhau were accused in one case arising out of an incident in Lohar locality in the year 1979. She is related to victim. She stated in her examination-in-chief that the victim was removed in a jeep to the hospital. In the cross-examination, Draupadibai further stated that she has not disclosed the incident to any one. Learned counsel for the appellant therefore wondered as to how the evidence of this witness could be relied on. First, her non-disclosure of incident to any one does not rule out her making a statement to the police. If defence wanted to take advantage of the witness's claim that she had not disclosed the incident to anybody, a specific question whether she was examined by police ought to have been put to this witness (Draupadi). Her claim that she had not disclosed the incident to any one may merely mean that she has not disclosed the incident to any one other than the authorities. It may not be fair for persons involved playing with words to apply similar standards about use of words to rustic villagers to draw unwarranted inferences. Right or the art of cross-examination, does not permit playing hide and seek.

8. There is no discrepancy in the statement that

victim was taken in a jeep to hospital and also that victim went to his house. It is obvious that till a jeep was brought, victim would not lie in a injured condition at the spot. It would be natural to help the victim to his house. Therefore, whether victim was shifted to house or went to his house is a small matter and does not diminish the value of eye witness account of Draupadibai. Incidentally, witness Sulochana also said that Rajendra was removed to his house and then he was taken to the hospital. Thus, the basic fact remains that Rajendra was shifted from the spot to his house first.

9. P.W.6-Sulochana is daughter-in-law of P.W.5-Draupadibai. She added that her mother-in-law Draupadibai had asked the accused ‘not to beat and wait’. Learned counsel for the appellant submitted that such is not the version of Draupadibai. This too is an insignificant detail. If one were to visualise the scenario, one can very well believe that Draupadi would have naturally uttered such words when she saw victim being attacked. While walking towards victim, it is not that all other organs of Draupadibai’s body were frozen like a "statue". Lips and tongue would speak, eyes would see and ears would listen as one walks to the rescue of a victim. Therefore, merely because activity of each organ is not separately

described, it does not follow that nothing else was going on.

10. Sulochana (P.W.6) states that Rajendra was not in a position to speak because of the bleeding. This does not mean that Rajendra had not given out any cry when he was beaten by accused first. It is obvious that after the injury to neck, the victim might not have been in a position to speak. His cry must be just before he received blow of knife on his neck. Such omission or two in Sulochana's whole statement does not reduce value of her testimony as an eye witness in this case.

11. P.W.7 Asha Gajanan Sutar states that on hearing sound of a quarrel, she came at the door of her house and found that accused Gajanan was abusing Rajendra. She stated that Rajendra told accused to come near him instead of abusing him from such distance and thereupon, according to P.W.7 Asha, accused ran towards Rajendra and inflicted blows by knife on Rajendra. It was suggested to this witness in vain that since she wanted to marry accused and accused refused to marry her, she was deposing falsely. There is no other suggestion worth mention to reduce the value of her testimony as an independent eye witness.

12. P.W.8-Tushar Ghadge stated that when Rajendra was proceeding for fetching water, Gajanan Pore came from behind abusing Rajendra. Rajendra parked his bicycle and told Gajanan not to abuse but to come near Rajendra. Gajanan rushed towards Rajendra, took out a knife from his pocket and inflicted injuries on the neck of Rajendra. This witness admits that Rajendra was his mother's cousin. But it does not follow that just because the victim was related to him (Tushar), he would falsely involve the accused. It is not shown that the witness was in any manner interested in falsely implicating the accused.

13. There is no reason to reject the account of these four eye witnesses who consistently state about murderous attack by appellant on victim. According to P.W.9-Dr.Milind Wabale, as observed by him in his post-mortem notes at Exhibit-27, this attack led to death of Rajendra.

14. P.W.9-Dr.Wabale seems to have been needlessly cross-examined on performing post-mortem in artificial light. While Modi undoubtedly prescribes that post-mortem should be conducted in natural day light as far as possible, times have changed and artificial light is as good as the natural day light. It also

seems that needlessly the witness was cross-examined about identity of dead body.

15. Complicity of accused in the incident is evident by statement of P.W.13-PSI Yashwant Ombase, who states that while he was proceeding for investigation, after receiving the complaint Exhibit-11, accused Gajanan appeared in the police station. Panchanama Exhibit-15 was drawn up between 12.50 hrs. and 13.15 hrs. on 27th October, 1990 whereby a knife was seized from the accused. Another Panchanama at Exhibit-21 was drawn up on the same day i.e. 27th October, 1990 between 13.15 hrs. and 13.35 hrs. whereby the clothes of the accused were seized. These panchanamas proved by P.W.3-Uttam Limbore corroborate the words of Investigating Officer P.W.13-PSI Ombase that the accused had indeed appeared in the police station soon after the incident, and a knife and blood stained clothes were seized from the accused.

16. P.W.14-Dy.SP Dnyaneshwar Phadtare sent the seized clothes to Forensic Science Laboratory. Report from Forensic Science Laboratory at Exhibit-39 shows that blood group of victim was "A". The knife seized from the accused as also the clothes of victim and the accused bore stains of blood group "A". Had the

prosecution taken the trouble of having blood group of accused ascertained, the case against the accused would have been further fortified. In any case, even in its absence, presence of stains of victim's blood group on clothes of accused and knife produced by accused soon after the incident is a very strong link to connect the accused to crime. The evidence on record is ample and adequate to indicate complicity of the appellant in murder of Rajendra.

17. In the result, on re-appreciation of the evidence, we conclude that the findings recorded by the learned Trial Judge that the appellant is guilty of offence punishable under Section 302 of Penal Code and resultant sentence imposed upon the appellant do not call for any interference. Consequently, the appeal is dismissed. The learned Additional Sessions Judge of concerned Sessions Division shall cause the appellant to be taken in custody and committed to Prison to serve out remaining sentence. The appellant shall accordingly surrender to his bail before the concerned Court of Sessions.

(V.G.PALSHIKAR, J)

(R.C.CHAVAN, J)